

APPENDIX A

UNITED STATES COURT OF APPEALS,
FOR THE NINTH CIRCUIT

No. 14499

Nov. 30, 1955

PAUL E. PLESHA, APPELLANT

vs.

UNITED STATES OF AMERICA, APPELLEE

Appeal from the United States District Court for
the Northern District of California, Northern
Division

Before: DENMAN, Chief Judge and ORR and
POPE, Circuit Judges

DENMAN, Chief Judge:

This is an appeal from a judgment denying appellant, a veteran of the Second World War, recovery of \$221.05, the unpaid portion of a special dividend due appellant under the provisions of his National Service Life Insurance policy. The District Court denied recovery, setting off that amount as owed by appellant to the Government for his obligation to reimburse it for sums paid to the California Western States Life Insurance Company to compensate it for coverage extended to appellant during World War II under the provisions of the Soldiers' and Sailors' Civil Relief Act of 1940. [54 Stat. 1178, 1179, 1183-1186; 50 U.S.C. Appendix §§510, 540-554 (1940 ed.)]

That Act provided, in part, that no insurance policy taken out before military service would lapse for the nonpayment of premiums while the insured was in service. If the serviceman died and the policy matured, all the unpaid premiums plus interest at the policy loan rate were to be deducted from the payment to the beneficiaries. If the serviceman desired to continue his policy after discharge, and he had not paid premiums while he was in service, he was required to pay all the back premiums plus interest at the policy loan rate. If, as here, the serviceman allowed his policy to lapse after discharge and did not pay the back premiums within one year after his discharge the United States would compensate the insurer. The Government would receive credit for the cash surrender value of the policy.

The United States contends that the lower court lacked jurisdiction to consider appellant's claim because no provision of the National Service Life Insurance Act created jurisdiction in United States District Courts to entertain actions for National Service Life Insurance dividends. See 38 U.S.C. §§817, 445 as construed by *Candell v. United States*, 189 F.2d 442 (Cir. 10, 1951). Assuming this contention to be true, it cannot be said that Congress intended 38 U.S.C. §§817, 445 to be the exclusive source of jurisdiction for claims to such dividends,¹ and it is obvious that such jurisdiction was created

¹ Congress vested exclusive jurisdiction in the District Courts under 38 U.S.C. §§817, 445 to determine claims to benefits for contingencies insured against. *Peyton v. United States*, 100 F. Supp. 823 (Ct. of Claims), cert. denied, 343 U.S. 909 (1952). There is no insurance on the dividends here claimed.

by the Tucker Act, 28 U.S.C. §1346 (a) (2), which provides:

"The district courts shall have original jurisdiction, concurrent with the Court of Claims, of:

* * * * *

(2) Any other civil action or claim against the United States, not exceeding \$10,000 in amount, founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort."²

The question here is did the Soldiers' and Sailors' Civil Relief Act of 1940 create a personal liability between a veteran and the United States where the veteran had allowed his policy to lapse after discharge and the United States had compensated his insurer for its coverage during the Second World War.

The District Court applied a rule of interpretation of the ambiguous provisions of the legislation and the Congressional comment thereon adverse to the veterans for whom the legislation was created, classifying them as amongst those who are engaged "in an attempt to syphon off some more of this nation's already fast ebbing fisc".

With this we do not agree. Rather we think

² See *Morton v. United States*, 113 F. Supp. 496 (E.D. N.Y. 1953); *Hörmel v. United States*, 123 F. Supp. 806 (S.D. N.Y. 1954), construing the same provision for jurisdiction.

Congress was contemplating the veterans incapacitated by bullet-inflicted wounds, or weakness from treatment while held as enemy prisoners and those having families and dependents to support in occupations lost with their savings exhausted during their war activities and the physicians and dentists who have lost their patients and the lawyers who have lost their clients and the business men who have lost their enterprises.

This we think is what the Supreme Court also had in mind when it established its rule of liberal construction favorable to the veteran in construing the Soldiers' and Sailors' Civil Relief Acts. "The Soldiers' and Sailors' Civil Relief Act is always to be liberally construed to protect those who have been obliged to drop their own affairs to take up the burdens of the nation," *Boone v. Lighter*, 319 U. S. 561, 575 (1943); *Le Maistre v. Leffers*, 333 U. S. 1, 6 (1947).

The Soldiers' and Sailors' Civil Relief Act of 1940 contained no provision for reimbursement of the United States where it had compensated the veteran's insurance company for coverage given to him while he was in service. There were no provisions specifying when the United States was to be repaid, how it was to be repaid, or how much it was to be repaid. The form on which appellant applied to have his policy protected by the Act, which was prepared by the Veterans Administration, stated only as follows regarding reimbursement of the United States:

"In consideration hereof, I hereby consent and agree that the United States shall be protected in the amount of any premiums and interest

guaranteed on the above numbered policy in the event of its maturity as a claim, or out of the cash surrender value of the policy, at the expiration of the period of protection under the Act."

The serviceman bringing his policy under the protection of the Act could have read the Act, the Regulations under it and this application form without finding anything to indicate that he was personally liable to reimburse the United States for sums it paid his insurance company in the event he did not continue the policy and pay the back premiums within a year from his discharge.

The theory of the United States is that the Soldiers' and Sailors' Civil Relief Act of 1940 created a contract of guaranty between the insured serviceman, his insurer and the Government, or that the United States is entitled to recover on an implied contract for paying the serviceman's insurance premiums at his request. In short, the gaps in the Act are to be filled in by resort to the common law. The United States points to Section 408 of the Act which provided:

"To indemnify it against loss the United States shall have a first lien upon any policy receiving the benefits of this article, subject only to any lien existing at the time the policy became subject to this Act, and no loan or settlement or payment of dividend shall be made by the insurer on such policy which may prejudice the security of such lien."

It urges that a lien is only a security device to enforce a debt rather than a remedy, and so Congress

must have intended a common law debt to arise between the veteran and the Government. However, the lien provision could have been intended only as a protection of the Government's interest in the cash surrender value of the policy which was credited to it if the veteran did not continue the policy by paying the back premiums within one year after his discharge.

There is an element within the Act which weakens the Government's theory of a common law right to reimbursement. Congress provided that insurance companies were to be compensated one year after the date when the Act ceased to be in force. There was to be a running balance of charges against the United States and credits to it. The United States was to be charged with the unpaid premiums of servicemen who held policies with a particular company covered by the Act. It was to be credited with the amount of unpaid premiums plus interest at the policy loan rate (this averaged 4 to 6% per annum) if a serviceman died, and the policy matured entitling the insurance company to deduct this amount from the benefits paid, or if a serviceman reinstated the policy upon discharge and paid the back premiums plus interest. At the end of each month a monthly difference was taken, and if the United States owed a company money, a certificate bearing interest at 3% was to be issued to it. As a result of compensating insurance companies on certificates based on the total experience of a particular company with all the servicemen who held its policies covered by the Act, it is difficult to determine the amount the United States actually expended on any individual veteran. Furthermore, the United States might make a profit if

it recovered the back premiums plus the policy loan rate as it claims here. Reinstatements and deaths of those covered by a particular company's policies might offset the amount of back premiums unpaid at the time of final accounting. Because of this situation the Court in *Hormel v. United States*, 123 F. Supp. 806 (S.D. N.Y. 1954) found that Congress had not intended to create a personal liability to reimburse the United States where a veteran had not paid the back premiums on his policy within one year after discharge.

The United States argues that profit was unlikely since the cash surrender values of the policies covered under the Act were built up during the War, and even if some profit resulted, a common law guarantor is entitled to a charge for his services. While this may be true, such provisions for compensating insurance companies in the act make the Government's theory of common law liability doubtful.

Appellant contends that the United States cannot enforce a common law right to reimbursement unless specifically authorized to do so by statute. They rely on *United States v. Gilman*, 347 U. S. 507 (1954). There the United States, having been held liable for the negligence of its employee in a suit under the Federal Tort Claims Act, sued to recover indemnity from that employee. The Court held that the United States could not recover. There were delicate policy questions of the relationship between the Government as an employer and its employee better decided by Congress than courts. The legislative history did not convince the Supreme Court that Congress had intended to create such a common law right of reimbursement.

The Gilman case does not preclude the Government's common law recovery here. However, the relationships between the United States and its servicemen and veterans cannot be said to be totally unlike that between it and its civil servants in so far as imposing personal liability is concerned. The Gilman case, and the rule of liberal construction in favor of servicemen and veterans previously discussed, require a strong showing from the legislative history that Congress intended to impose a personal liability for reimbursement not spelled out in the statute.

We are unable to find such a strong showing from the legislative history that Congress intended to impose a common law liability on veterans who did not pay their back insurance premiums plus interest within one year after their discharge from service.

The Soldiers' and Sailors' Civil Relief Act of 1918 [40 Stat. 440, 444-447] contained the same insurance provisions as the 1940 Act. As originally drafted it provided that policies would not lapse for nonpayment of premiums while the insured was in service, and that the premiums would be considered a loan against the policy's cash surrender value. The insurance industry objected since this would give the veteran an option whether to pay the back premiums or not, and leave the insurers without a means to assure themselves of compensation for the risks they had taken. The provisions under consideration here were designed to meet that objection. However, this history could support either the view that the veteran's option to pay or not pay his back premiums had been taken away or the view that the option had been left,

but the insurance companies were assured that they would receive compensation from either the veteran or the Government. There is reason to believe that the draftsman of the 1918 bill thought that the cash surrender value which was subject to the Government's lien would be sufficient to recoup whatever the Government might have to pay out. See Hearings and Memoranda before the Subcommittee of the Committee on the Judiciary, U. S. Senate, 65th Cong., 1st and 2d Sess., on S. 2859 and H.R. 6361, p. 134-135. Veterans Administrator's Decision No. 742 summarizes our conclusions about the 1918 legislative history:

"It is equally true that statements may be abstracted from the hearings which tend to support arguments that the transaction did and that it did not create a debt."

The 1940 legislative history is equally as indefinite. There is a debate on the floor of the House between Mr. Voorheis and Mr. Arends, the floor manager of the bill, wherein it is stated several times that the veteran will have to reimburse the Government for payments made to his insurance company. 86 Cong. Rec. pp. 13132-13133. On the other hand, Senate Report on the 1940 bill indicates that the Government is to be reimbursed only from the cash surrender value of the policy. S. Rep. No. 2109, 76th Cong., 3d Sess., p. 3.

In 1942 the Soldiers' and Sailors' Civil Relief Act was amended to specifically provide for personal liability on the part of the veteran for amounts paid by the United States to his insurance company. [56 Stat. 769, 773-776; 50 U.S.C. Appendix, §§ 541-548] The amendment was called a

"clarification". S. Rept. No. 716, 77th Cong., 1st Sess., p. 3. However, the indebtedness provision in the Senate bill developed as follows: As the bill was first introduced it read:

"... The amount paid by the United States to the insurer shall become a debt due to the United States by the insured."

Later a phrase was inserted between the words "insurer" and "shall" which read "... on account of applications made subsequent to approval of this Act." Finally this was changed to read: "... on account of applications approved under the provisions of this Article, as amended." See 50 U.S.C. Appendix §546. If veterans were liable for such payments under the 1940 Act, the additional language limiting the indebtedness provision to applications received after the effective date of the 1942 Act would have been pointless.

Congress may or may not have intended that the United States enjoy a common law recovery. However, we must construe statutes such as the Soldiers' and Sailors' Civil Relief Act of 1940 liberally to benefit servicemen and veterans. We must, under the theory of the Gilman case, not find common law liability in favor of the Government where it is not provided for in the statute, where it is not an "established type of liability", and where the legislative history is inconclusive as to whether Congress intended such a liability. And finally, we are unwilling to impose such a liability on veterans where the application forms to bring their policies under the protections of the 1940 Act limited the United States' right to reimbursement to

situations other than the one presented here. Because of these reasons we disagree with the decision of the Tenth Circuit in *United States v. Hender*, 225 F.2d 106 (Cir. 10, 1955) which ignored the Supreme Court decisions above cited on their rule of liberal interpretation for the veteran.

The judgment is reversed and the District Court ordered to enter judgment for appellant.

(Endorsed:) Opinion. Filed Nov. 30, 1955.

PAUL P. O'BRIEN,

Clerk.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 14499

PAUL E. PLESHA, APPELLANT,

vs.

UNITED STATES OF AMERICA, APPELLEE

JUDGMENT

Appeal from the United States District Court for the Northern District of California, Northern Division.

This cause came on to be heard on the Transcript of the Record from the United States District Court for the Northern District of California, Northern Division, and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the Judgment of the said District Court in this cause be, and

hereby is reversed, and that the said District Court be, and hereby is ordered to enter judgment for Appellant.

(Endorsed) Judgment.

Filed and Entered: November 30, 1955, Paul P. O'Brien, Clerk.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 14,499

JAMES E. MABBUTT AND MYRON L. KERN,
APPELLANTS,

• vs. •

UNITED STATES OF AMERICA, APPELLEE

Before: DENMAN, Chief Judge and ORR and POPE,
Circuit Judges

Per Curiam:

For the reasons stated in our opinion in Paul E. Plesha v. United States of America, No. 14,499, filed November 30, 1955 the judgments for Mabbutt and Kern are reversed.

(S.) WILLIAM DENMAN,
Chief Judge,

(S.) ————,
Circuit Judge,

(S.) WALTER L. POPE,
Circuit Judge.

(Endorsed) Filed: January 5, 1956, Paul P. O'Brien, Clerk.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 14,499

JAMES E. MABBUTT AND MYRON L. KERN,
APPELLANTS,

vs.

UNITED STATES OF AMERICA, APPELLEE

JUDGMENT

Appeal from the United States District Court for the Northern District of California, Northern Division.

This cause came on to be heard on the Transcript of the Record from the United States District Court for the Northern District of California, Northern Division, and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the Judgment of the said District Court in this cause be, and hereby is reversed, and that the said District Court be, and hereby is ordered to enter judgments for Appellants.

(Endorsed) Judgment.

Filed and Entered: January 5, 1956, Paul P. O'Brien, Clerk.

APPENDIX B

The Soldiers' and Sailors' Civil Relief Act of 1940 provides in pertinent part as follows (54 Stat. 1178, 1179, 1183-1186, 1190-1191; 50 U. S. C. App. (1940 ed.) 510, 540-554):

ARTICLE I

GENERAL PROVISIONS.

SEC. 100. In order to provide for, strengthen, and expedite the national defense under the emergent conditions which are threatening the peace and security of the United States and to enable the United States the more successfully to fulfill the requirements of the national defense, provision is hereby made to suspend enforcement of civil liabilities, in certain cases, of persons in the military service of the United States in order to enable such persons to devote their entire energy to the defense needs of the Nation, and to this end the following provisions are made for the temporary suspension of legal proceedings and transactions which may prejudice the civil rights of persons in such service during the period herein specified over which this Act remains in force.

* * * * *

ARTICLE IV

INSURANCE

SEC. 400. In this article the term "policy" shall include any contract of life insurance on the level premium or legal reserve plan. It shall also include any benefit in the nature of life insurance arising out of membership in any fraternal or beneficial association; the term "premium" shall include membership dues or assessments in such association, and the date of issuance of policy as herein limited shall refer to the date of admission to member-

ship in such association; the term "insured" shall include any person who is the holder of a policy as defined in this article; the term "insurer" shall include any corporation, partnership, or other form of association which secures or provides insurance under any policy as defined in this article.

SEC. 401. (1) The benefits of this article shall apply to any person in military service who is the holder of a policy of life insurance, when such holder shall apply for such benefits on a form prepared in accordance with regulations which shall be prescribed by the Administrator of Veterans' Affairs. Such form shall set forth particularly that the application therein made is a consent to such modification of the terms of the original contract of insurance as are made necessary by the provisions of this article and by receiving and filing the same the insurer shall be deemed to have assented thereto, to the extent, if any, to which the policy on which the application is made is within the provisions of this article. The original of such application shall be sent by the insured to the insurer, and a copy thereof to the Veterans' Administration.

(2) The Veterans' Administration shall issue through suitable military and naval channels a notice for distribution by appropriate military and naval authorities to persons in the military service explaining the provisions of this article and shall furnish forms to be distributed to those desiring to make application for its benefits.

SEC. 402. The benefits of this Act shall be

available to any person in military service in respect of contracts of insurance in force under their terms up to but not exceeding a face value of \$5,000, irrespective of the number of policies held by such person whether in one or more companies, when such contracts were made and a premium was paid thereon before the date of approval of this Act or not less than thirty days before entry into the military service; but in no event shall the provisions of this article apply to any policy on which premiums are due and unpaid for a period of more than one year at the time when application for the benefits of this article is made or in respect of any policy on which there is outstanding a policy loan or other indebtedness equal to or greater than 50 per centum of the cash surrender value of the policy.

SEC. 403. The Veterans' Administration shall, subject to regulations, which shall be prescribed by the Administrator of Veterans Affairs, compile and maintain a list of such persons in military service as have made application for the benefits of this article, and shall (1) reject any application for such benefits made by persons who are not persons in military service; (2) reject any applications for such benefits in excess of the amount permitted by section 402; and (3) reject any applications in respect of contracts of insurance otherwise not entitled to the benefits of this article. Said Administration shall immediately notify the insurer and the insured in writing of every rejection or approval.

SEC. 404. When one or more applications are made under this article by any one person in military service in respect of insurance exceeding a total face value of \$5,000, whether on one or more policies or in one or more companies, and the insured shall not in his application indicate an order of preference, the Veterans' Administration shall reject such policies as have the inferior cash surrender value, so as to reduce the total benefits conferred within the face value of \$5,000, and where necessary for this purpose shall direct the insurer to divide any policy into two separate policies. The said Administration shall immediately notify the insurer and the insured in writing of such selection.

SEC. 405. No policy which has not lapsed for the nonpayment of premium before the commencement of the period of military service of the insured, and which has been brought within the benefits of this article, shall lapse or be forfeited for the nonpayment of premium during the period of such service or during one year after the expiration of such period; *Provided*, That in no case shall this prohibition extend for more than one year after the date when this Act ceases to be in force.

SEC. 406. Within the first fifteen days of each calendar month after the date of approval of this Act until the expiration of one year after the date when this Act ceases to be in force every insurance corporation or association to which application has been made as herein provided for the benefits of this article, shall

render to the Veterans' Administration a report, duly verified, setting forth the following facts:

First. The names of the persons who have applied for such benefits, and the face value of the policies in respect of which such benefits have been applied for by such persons, during the preceding calendar month.

Second. A list as far as practicable of the premiums in respect of policies entitled to the benefits of this article which remain unpaid on the last day of the preceding calendar month, which day is at least thirty-one days after the due date of the premiums, provided such premiums have not previously been so reported as in default.

Third. A list of premiums which, having been previously reported as in default, have been paid by the policyholder or someone on his behalf in whole or in part during the preceding calendar month.

Fourth. A computation of the difference between the total amount of defaulted premiums therein reported and the total amount of premiums paid as therein reported, after having been previously reported as in default. From this sum shall be deducted the total sum of any premiums previously reported as in default upon policies in respect of which the Veterans' Administration has, since the date of such report, rejected an application for the benefits of this article. The final sum so arrived at shall be denominated the monthly difference.

SEC. 407. The Administrator of Veterans'

Affairs shall verify the computation of monthly difference reported by each insurer and shall, within ten days thereafter, deliver each month to the proper officer of such insurer, a certificate in the amount of the monthly difference certified in respect of each insurer. Such certificate shall be signed by said Administrator in the name of the United States, shall be in such form as the Administrator shall determine, shall be payable to the insurer within sixty days after the approval of the statement of account, as provided in section 411 hereof, and shall bear interest at a rate to be prescribed by the Secretary of the Treasury, payable with the principal. Such certificate shall not be transferred except with the approval of said Administrator and shall remain with the insurer until settlement is made in accordance with this article.

SEC. 408. The certificate so delivered shall be held by the respective insurers as security for the payment of the defaulted premiums with interest. To indemnify it against loss the United States shall have a first lien upon any policy receiving the benefits of this article, subject only to any lien existing at the time the policy became subject to this Act, and no loan or settlement or payment of dividend shall be made by the insurer on such policy which may prejudice the security of such lien. Before any dividend is paid, or any loan or settlement is made the written consent of the Veterans' Administration must be obtained.

SEC. 409. In the event that the military serv-

ice of any person being the holder of a policy receiving the benefits of this article shall be terminated by death, the amount of any unpaid premiums, with interest at the rate provided for in the policy for policy loans, shall be deducted from the proceeds of the policy and shall be included in the next monthly report of the insurer as premiums paid.

SEC. 410. If the insured does not within one year after the termination of his period of military service pay to the insurer all past due premiums with interest thereon from their several due dates at the rate provided in the policy for policy loans, the policy shall at the end of such year immediately lapse and become void, and the insurer shall thereupon become liable to pay the cash surrender value thereof, if any: *Provided*, That if the insured is in the military service when this Act ceases to be in force, such lapse shall occur and surrender value be payable at the expiration of one year after the date when this Act ceases to be in force.

SEC. 411. At the expiration of one year after the date when this Act ceases to be in force there shall be an account stated between each insurer and the United States, in which there shall be credited to the insurer the total amount of the certificates held as security under this article, together with accrued interest to the date of the account, and in which there shall be credited to the United States the amount of the cash surrender value of each policy lapsed or forfeited as provided in section 410, but not in any case a greater amount on any

policy than the total of the unpaid premiums with interest thereon at the rate provided for in the policy for policy loans.

SEC. 412. The balance in favor of the insurer in each case shall be certified by the Administrator of Veterans' Affairs to the Secretary of the Treasury, who shall pay to the insurer the amount thereof, which is hereby authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, upon the surrender by the insurer of the certificates delivered to it from time to time by the Administrator of Veterans' Affairs under the provisions of this article.

SEC. 413. This article shall not apply to any policy which is void or which may at the option of the insured be voidable, if the insured is in military service, either in this country or abroad, ~~nor to any policy which as a result of being in military service, either in this country or abroad, provides for the payment of any sum less than the face thereof or for the payment of an additional amount as premium.~~

SEC. 414. This article shall apply only to insurance companies or associations which are required by the law under which they are organized or doing business to maintain a reserve, or, which if not so required, have made or shall make provision for the collection from all those insured in such insurer of a premium to cover the special war risk of those insured persons who are in military service.

ARTICLE VI

ADMINISTRATIVE REMEDIES

* * * * *

SEC. 604. This Act shall remain in force until May 15, 1945: *Provided*, That should the United States be then engaged in a war, this Act shall remain in force until such war is terminated by a treaty of peace proclaimed by the President and for six months thereafter * * *

The Soldiers' and Sailors' Civil Relief Act of 1940 as amended in 1942 provides in pertinent part as follows (56 Stat. 769, 773-776; 50 U.S.C. App. 541-548):

ARTICLE IV

INSURANCE

* * * * *

SEC. 401. The benefits and privileges of this article shall apply to any insured, when such insured, or a person designated by him, or, in case the insured is outside the continental United States (excluding Alaska and the Panama Canal Zone), a beneficiary, shall make written application for protection under this article, unless the Administrator of Veterans' Affairs in passing upon such application as provided in this article shall find that the policy is not entitled to protection hereunder. The Veterans' Administration shall give notice to the military and naval authorities of the

provisions of this article, and shall include in such notice an explanation of such provisions for the information of those desiring to make application for the benefits thereof. The original of such application shall be sent by the insured to the insurer, and a copy thereof to the Veterans' Administration. The total amount of insurance on the life of one insured under policies protected by the provisions of this article shall not exceed \$10,000. If an insured makes application for protection of policies on his life totaling insurance in excess of \$10,000, the Administrator is authorized to have the amount of insurance divided into two or more policies so that the protection of this article may be extended to include policies for a total amount of insurance not to exceed \$10,000, and a policy which affords the best security to the Government shall be given preference.

SEC. 402. Any writing signed by the insured and identifying the policy and the insurer, and agreeing that his rights under the policy are subject to and modified by the provisions of this article, shall be sufficient as an application for the benefits of this article, but the Veterans' Administration may require the insured and insurer to execute such other forms as may be deemed advisable. Upon receipt of the application of the insured the insurer shall furnish such report to the Veterans' Administration concerning the policy as shall be prescribed by regulations. The insured who has made application for protection under this ar-

ticle and the insurer shall be deemed to have agreed to such modification of the policy as may be required to give this article full force and effect with respect to such policy.

SEC. 403. The Administrator of Veterans' Affairs shall find whether the policy is entitled to protection under this article and shall notify the insured and the insurer of such finding. Any policy found by the Administrator of Veterans' Affairs to be entitled to protection under this article shall not, subsequent to date of application, and during the period of military service of the insured or during two years after the expiration of such service, lapse or otherwise terminate or be forfeited for the nonpayment of a premium becoming due and payable, or the nonpayment of any indebtedness or interest.

SEC. 404. No dividend or other monetary benefit under a policy shall be paid to an insured or used to purchase dividend additions while a policy is protected by the provisions of this article except with the consent and approval of the Veterans' Administration. If such consent is not procured, such dividends or benefits shall be added to the value of the policy to be used as a credit when final settlement is made with the insurer. No cash value, loan value, or withdrawal of dividend accumulation, or unearned premium, or other value of similar character shall be available to the insured while the policy is protected under this article except upon approval by the Veterans' Administration. The insured's

right to change a beneficiary designation or select an optional settlement for a beneficiary shall not be affected by the provisions of this article.

SEC. 405. In the event of maturity of a policy as a death claim or otherwise before the expiration of the period of protection under the provisions of this article, the insurer in making settlement will deduct from the amount of insurance the premiums guaranteed under this article, together with interest thereon at the rate fixed in the policy for policy loans. If no rate of interest is specifically fixed in the policy, the rate shall be the rate fixed for policy loans in other policies issued by the insurer at the time the policy brought under the Act was issued. The amount deducted by reason of the protection afforded by this article shall be reported by the insurer to the Administrator of Veterans Affairs.

SEC. 406. Payment of premiums and interest thereon at the rate specified in section 405 hereof becoming due on a policy while protected under the provisions of this article is guaranteed by the United States, and if the amount so guaranteed is not paid to the insurer prior to the expiration of the period of insurance protection under this article, the amount then due shall be treated by the insurer as a policy loan on such policy, but if at the expiration of said period the cash surrender value is less than the amount then due, the policy shall then cease and terminate

and the United States shall pay the insurer the difference between such amount and the cash surrender value. The amount paid by the United States to an insurer on account of applications approved under the provisions of this article, as amended, shall become a debt due to the United States by the insured on whose account payment was made and, notwithstanding any other Act, such amount may be collected either by deduction from any amount due said insured by the United States or as otherwise authorized by law.

SEC. 407. The Administrator of Veterans' Affairs is hereby authorized and directed to provide by regulations for such rules of procedure and forms as he may deem advisable in carrying out the provisions of this article. The findings of fact and conclusions of law made by the Administrator of Veterans' Affairs in administering the provisions of this article shall be final, and shall not be subject to review by any other official or agency of the Government. The Administrator of Veterans' Affairs shall report annually to the Congress on the administration of this article.

SEC. 408. (1) The provisions of this article in force immediately prior to the enactment of the Soldiers' and Sailors' Civil Relief Act amendments of 1942 (hereinafter in this section called "such provisions") shall remain in full force and effect with respect to all valid applications for protection executed prior to the date of enactment of the

Soldiers' and Sailors' Civil Relief Act amendments of 1942 and all policies to which such applications pertain shall continue to be entitled to the protection granted thereby.

(2) Any insurer under a policy accepted under such provisions shall, subject to the approval of the Administrator of Veterans' Affairs and upon complete surrender by it to the United States, within ninety days after the date of enactment of the Soldiers' and Sailors' Civil Relief Act amendments of 1942, of all certificates issued in accordance with such provisions together with all right to payment thereunder, be entitled to the guarantee of unpaid premiums and interest thereon and the mode of settlement for such policies as provided by this article, as amended. The privileges and benefits granted by the foregoing sentence shall be in lieu of the method of settlement, and the requirement for accounts and reports prescribed by such provisions. In the event any such insurer fails to surrender within the said ninety days all such certificates and rights to payment, the accounts, reports, and settlements required to be made by such insurer under such provisions shall continue to be made as required and shall be governed by such provisions.